

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 328 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

BOARD OPINION

Versus

RAJPRAKASH SPINNING MILLS LTD.

Appearance:

BOARD OPINION for Petitioner
MRS SWATI SOPARKAR for Respondent No. 1
MR RM DESAI for Respondent No. 2
SERVED BY RPAD - (N) for Respondent No. 3
NOTICE SERVED for Respondent No. 4
MR JD AJMERA for Respondent No. 6
MR SK JHAVERI for Respondent No. 8
MR DS VASAVADA for Respondent No. 9
MR SR SHAH for Respondent No. 10
NOTICE NOT RECD BACK for Respondent No. 13

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/09/98

ORAL JUDGEMENT

This petition arises from the opinion dated

28.4.1995 of the Board for Industrial and Financial Reconstruction (hereinafter referred to as "the BIFR") in case No. 290/87 (new case No. 021/95) recommending to this Court under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the SICA Act") for winding up of M/s Raj Prakash Spg. Mills Ltd. (hereinafter referred to as "the Company") as confirmed by the Appellate Authority for Industrial & Financial Reconstruction (hereinafter referred to as "the AAIFR" or "the appellate authority") on 16.9.1996 in Appeal No. 84 of 1995.

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FIRST PHASE OF PROCEEDINGS BEFORE THE BIFR :

#. At the instance of the management of the Company as well as at the instance of the Bank of Baroda, the Company's case was referred to the BIFR. The Company was declared to be a sick industrial Company on 22.9.1988. The following reasons were noticed by the BIFR for the Company's sickness (page 256 of the paper book):-

- (I) Lack of modernization with no substantial additional to machinery/equipment, in the last 10 years.
- (II) Obsolete machinery resulting in poor efficiency which eroded competitive ability both in quality and price.
- (III) Recessionary conditions in the textile industry.
- (IV) Liquidity crunch resulting from continuous cash losses and rising input costs; and
- (V) Inadequate/ineffective management provided by the promoters.

The BIFR also noted that the working of the Company started deteriorating from 1975 onwards and that as on 31.3.1992, the networth was negative to the extent of Rs.260 lacs with accumulated losses of Rs.237 lacs against share capital of Rs.45 lacs and reserves of Rs.21 lacs and the losses had thus wiped out the share capital by almost seven times. The BIFR also noted that the Bank of Baroda had instituted a suit against the Company for recovery of its dues.

#. The BIFR appointed the Industrial Reconstruction Bank of India (IRBI), which is now Industrial Investment Bank of India (IIBI) as the Operating Agency which prepared a draft scheme for rehabilitation of the Company after considering the responses of the various parties including the management of the Company, the Bank of Baroda, which is the only secured creditor and the workers' union, State Government, the Regional provident Commissioner and the Employees State Insurance Corporation. With the consent of all the aforesaid parties the BIFR sanctioned the scheme on 14.10.1993.

#. The main features of the rehabilitation scheme were as under :-

4.1 The scheme envisaged capital expenditure for acquisition of 5 Nos. High production card conversion and 2 Nos. open end machines with 160 rotors at a cost of Rs.65 lacs, including contingency and an assumption that no cash credit facility would be availed of from BOB.

4.1 Cost of Project (Rs./lacs)

Capital Expenditure	55.00	
Contingency		10.00
Working Capital	25.00	
Payment of Statutory Liability (1st year)		24.00
Payment to Bank (down payment)		40.00

	154.00	

4.2 Means of financing : (Rs./lacs)

Share Capital by Promoters/ Associates	50.00	
Government of Gujarat Funds/ Deferment of BOB dues	80.00	
Sale of Stock	15.00	
Internal accruals	9.00	

		154.00

4.2 Under the scheme, the Bank and the Company were to obtain consent decree on the basis of the consent to be signed by all the defendants including the guarantors except guarantor Mr. R.V. Patel. The Company was to repay the bank dues computed as under:-

- (i) Interest on suit amount of Rs.203 lacs shall be charged @ 10% p.a. on simple basis from the date of filing suit till date of consent decree.
- (ii) The amount so arrived (approx. Rs.304 lacs) shall carry interest @ 12% p.a. with quarterly rests (linked to bank rate and will fluctuate accordingly). Interest shall be paid by end of every quarter beginning from June 1993.

4.3 Under the scheme, the Company was required to pay the bank dues as under :-

- (i) Down payment of Rs.25 lacs (by induction of fresh capital by promoters) within one week after BIFR approves the scheme.
- (ii) Further Rs.15/- lacs (by sale of stocks).
- (iii) Further Rs.25 lacs by December 1993 (to guarantee this payment in time, the same shall be additionally secured by way of equitable mortgage of property situated at Tarapur owned by the guarantors). The additional security offered shall be retained atleast upto repayment of 50% of Bank's dues.
- (iv) Balance to be paid in monthly instalment of Rs.3.25 lacs beginning from April 1994 and ending March 2000.
- (v) In case of default in payment of three monthly instalment each of Rs.3.25 lacs as proposed and/or one instalment of quarterly interest, the Bank shall exercise its right to have recourse for execution of consent decree.

4.4 The scheme also provided that no working capital facility was to be provided by the bank. However, in case of need the Company could approach other banks subject to BOB issuing 'No Objection Letter'.

4.5 The Government of Gujarat had also agreed to

extend the package of reliefs/concessions as available to sick textile mills in Gujarat aggregating to Rs.40 lacs carrying 12% p.a. rate of interest chargeable from 1995-96 and the entire said amount alongwith earlier dues was to be repaid by the Company in six years. (para 6.2 of the scheme). Even the Central Government agreed that 20% of the PF/ESI dues may be paid initially and the remaining amount would be repayable in 6 years, commencing from 1993-94, in quarterly instalments. The said arrangement was to be backed up by a bank guarantee to be furnished by the Company (para 6.3).

4.6 The Company was also to constitute a management Committee in a form satisfactory to IRBI/BOB to review on a monthly basis the operation of the Company in all aspects and closely monitor the implementation of the revival scheme and the Company was to appoint Concurrent Auditors with direct reporting relationship to the IRBI/BOB on terms satisfactory to the latter. The Company was to satisfy IRBI/BOB that the physical progress as well as expenditure incurred on the scheme is as per the original schedule (paras 7.1 to 7.3).

4.7 Para 6.4 of the scheme provided that apart from other obligations, the promoters were to induct Rs.50 lacs by way of equity in 1993-94.

4.8 The scheme was sanctioned by the BIFR on 14.10.1993 with immediate effect.

FAILURE OF THE BIFR SCHEME & BIFR OPINION FOR WINDING UP:

#. When the case came up before the BIFR on 22.2.1995 for reviewing the progress in regard to implementation of the scheme, the Operating Agency pointed out that the Company despite reminders had not been submitting the requisite progress reports and, therefore, the Operating Agency was not in a position to submit its report.

The Bank of Baroda also stated that the Company had not complied with the stipulations made in the sanctioned scheme and that it had not even got insurance cover in respect of the stocks pledged to the bank and, therefore, the bank had arranged for insurance of the stocks for which the insurance premium to be paid by the Company was not reimbursed.

Mr Prakash Patel, Chairman of the Company stated that the promoters had already brought Rs.15 lacs in the Company and had made payment of the wages of the workers to the tune of Rs.4 lacs and that the workers/staff of the Company were on strike since June, 1994 and the

Company's operations could not be carried on. According to Mr Patel, the dues to the Bank of Baroda stood at Rs.3.5 Crores approx. and the dues of the workers stood at Rs.25 lacs. He confirmed that he had not made payment to Bank of Baroda as per the provisions of the sanctioned scheme and also confirmed that at the meeting held with the Bank of Baroda officers on 5.12.1994, the promoters had expressed helplessness in running the mill and desired sale of the same.

The Commissioner for Provident Fund stated that the dues in respect of the Company stood at Rs.44.40 lacs towards principal amount and Rs.35.32 lacs towards damages. The Inspector from ESIC stated that the dues in respect of the Company stood at Rs.60.47 lacs besides interest and damages.

Mr NM Barot, President of the Majoor Mahajan Sangh stated that the wages of the workers for six months amounting to Rs.15 lacs remained to be paid despite order of the Labour Court, after closure of the mill. The charge of the management of the Company that the workers were on strike was repudiated by the President of the Union who stated that it was Mr Prakash Patel who was on strike and had disappeared from the scene by handing over possession of the unit to the time keepers.

#. After hearing all the parties, the BIFR reached the conclusion on 22.2.1995 that the rehabilitation scheme sanctioned on 14.10.1993 had failed and that the promoters were given more than ample time to revive the Company, but they were not able to infuse the required funds towards cost of the rehabilitation scheme. The BIFR, therefore, formed a prima facie opinion that the Company is not likely to make its networth positive within a reasonable while meeting its financial obligations and as a result thereof it is not likely to become viable in future and that it was also not feasible to adopt any of the measures specified in Section 18 of the Act in relation to the Company. The BIFR, therefore, directed to issue public notices for winding up of the Company under Section 20 of the SICA Act, for consideration of objections/suggestions or alternative proposals, if any. The aforesaid advertisement was issued in the first week of March, 1995.

#. When the case again came up for consideration before the BIFR on 28.4.1995, Mr Dhir, Consultant representing the Company stated that the promoters were very much keen to rehabilitate the Company and had been negotiating with the various parties viz. M/s GSL (India) Ltd. P.

Rajaratnam & Associates and Mr Veerana of Shree Ganeshar Textile Mills Ltd. However, the negotiations with these parties had not been completed and as such some more time was required to enable the Company to formulate a fresh proposal alongwith a co-promoter for rehabilitation of the Company on a long term basis. However, the Company had submitted an alternative proposal based on disposal of the long ring frame spinning section while retaining the open and spinning section, as also disposal of surplus assets, to enable it to be rehabilitated on its own. The Consultant further submitted that the replacement cost for 22000 spindles at Rs.20,000/- per spindle, would come to nearly Rs.40 Crores. The dues in respect of Bank of Baroda stood at Rs.8.47 Crores (Rs.2.03 Cores principal and Rs.6.44 Crores interest) and the Company owed Rs.60 lacs to ESIC. Upon negotiation with the workers, the latter had agreed to settle their dues at Rs.75 lacs and the Company prayed for six weeks' time for submission of a credible revival proposal, as also 6 months' time for disposal of the Company's assets for payment of the dues to the creditors/workers. All the other parties i.e. Bank of Baroda, Labour Union, Employees State Insurance Corporation, Provident Fund Commissioner suggested that the Company deserved to be wound up.

#. The BIFR considered the facts on record and the submissions made and came to the conclusion on 28.4.1995 that despite ample opportunity given to the Company, the scheme sanctioned on 14.10.1993 had failed and no credible revival proposal was received from the Company. In the meantime, the dues of the bank/institutions had gone up substantially and there was no valid objection from any one against the public notice issued for the winding up of the Company. The alternative suggestion of the Company to settle the dues of the creditors and labour was not acceptable as it envisaged huge sacrifices and involved uncertainties in the disposal of assets. The BIFR, therefore, confirmed its prima facie opinion that the Company is not likely to make its networth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and the Company as a result thereof is not likely to become viable in future and that it was just and equitable that the Company be wound up.

APPEAL BEFORE THE AAIFR:

#. The aforesaid opinion of the BIFR was challenged by the Company before the appellate authority under Sec. 25 of the SICA Act.

When the appeal reached hearing before the AAIFR on 12.9.1996, the Bank of Baroda and the workers' union reiterated that the Company deserved to be wound up. It was submitted by the Operating Agency that although it had received two enquiries from Sunflag Filaments Ltd. and Ranjan Textiles (Machinery Division), no subsequent information with regard to any scheme was received from them so far. The Operating Agency submitted that the scheme submitted by the existing promoter was very sketchy and hence no detailed rehabilitation scheme can be prepared out of the said proposal.

Still, however, the appellate authority considered the proposed scheme under which the Company had suggested partial sale of machinery to the extent of Rs.70 lacs and also sale of 17 Acres of surplus land to fetch Rs.150 lacs. The appellate authority considered the said proposal and found that even assuming that the existing promoters would be in a position to bring in Rs.220 lacs, it would not be possible with this amount to revive the Company. The appellate authority, therefore, dismissed the appeal and confirmed the opinion dated 28.4.1995 of the BIFR.

COMPANY PETITION PURSUANT TO THE BIFR OPINION

##. This Court has received the aforesaid opinion of the BIFR as confirmed by the appellate authority. After issuing notice to the parties, the learned counsel for the Company was heard and, thereafter this Court admitted this petition on 28.1.1998 and notice of the petition was ordered to be published in two daily newspapers. Mr Prakash Patel, Chairman of the Company has filed affidavit in reply dated 27.4.1998 for contesting the opinion of the BIFR and AAIFR. The matter has been finally heard at length on four days.

CONTENTIONS ON BEHALF OF COMPANY

##. Mr Soparkar, learned counsel appearing for the Company-M/s Raj Prakash Spinning Mills Ltd. has raised the following contentions for challenging the opinion of the BIFR and for dismissing the petition :-

- (i) The Company Court is not bound to accept the opinion of the BIFR and the AAIFR, and the Company Court has to independently form the view as regards the viability of the Company.
- (ii) The BIFR as well as the appellate authority

proceeded on a factually wrong premise that the dues of the Bank of Baroda were Rs.8.47 Crores as on 31.12.1994 whereas the dues were much less. The amount claimed by the Bank of Baroda in the suit filed in the year 1987 was only Rs.2.03 Crores. Once the suit is filed, interest pendente lite would be covered by the provisions of the Code of Civil Procedure and, therefore, even with interest the bank's claims would never go upto Rs.8.47 Crores as on 31.12.1994 or even till the date of passing of the order of AAIFR in September, 1996. Once the matter becomes subjudice even before the Debt Recovery Tribunal, the interest is not awarded on a compound rate but only on simple interest basis and, therefore, the whole basis of the finding given by the BIFR and the AAIFR that the Company would not be able to pay the dues of the bank, which was the only secured creditor, was factually untenable.

- (iii) The Bank has no locus standi to make any submission for winding up of the Company when the bank, which is the secured creditor, has already filed a suit for recovery of its dues and there is no injunction against the bank proceeding with the suit before the Debt Recovery Tribunal and the Company is not going to sell its assets without permission of the bank.
- (iv) The sanctioned BIFR scheme had failed because of the workers' strike after the scheme of rehabilitation.
- (v) The opinion given by the AAIFR was vitiated by violation of the principles of natural justice as the hearing of the appeal was fixed on 12.9.1996 whereas the Company received the intimation from the appellate authority only on 10.9.1996 and, therefore, the sufficiently detailed revised scheme could not be presented before the appellate authority. Even the scheme submitted by the Company as per the letter 11.9.1996 (pg. 321 of the paper book) is not considered by the appellate authority and, therefore, the judgement of the appellate authority must be set aside and the matter may be remanded to the BIFR.
- (vi) In any view of the matter, no useful purpose will be served by passing an order of winding up of the Company because the Official Liquidator will not be able to effectively manage or dispose of

the properties of the Company which are at Khambhat.

SUBMISSIONS ON BEHALF OF OTHER PARTIES

##. On the other hand Mr RM Desai, learned counsel for the Bank of Baroda has submitted that -

(i) the bank has the locus standi to appear in these proceedings and to make submissions for winding up.

(ii) The BIFR had given ample opportunity to the management of the Company to bring fresh funds or a co-promoter for reviving the Company. In fact, the scheme sanctioned by the BIFR as far back as on 14.10.1993 failed only on account of the defaults committed by the management of the Company in not carrying out the obligations imposed upon them under the said sanctioned scheme.

(iii) The Company's representative Mr Dhir had admitted the dues of the Company in the following words:

"Shri Dhir submitted that the dues in respect of Bank of Baroda stood at Rs.8.47 Crores (Rs.2.03 Crores principal and Rs.6.44 Crores interest)."

The Bank of Baroda is entitled to calculate its dues as per the provisions of the agreement between the parties including the provisions for interest and penal interest.

(iv) The management of the Company has not made any bona fide offer to revive the Company in spite of the fact that the factory had closed since 1988 and the Operating Agency had also submitted before the AAIFR on 14.6.1996 that no concrete proposal or scheme had come from any person from amongst those who had only made some inquiries. All other parties had supported the opinion for winding up of the Company.

(v) The BIFR as well as the AAIFR had considered even the so called scheme submitted by the Company as per its letter dated 11.9.1996 and found on merits that it was not a credible and viable scheme.

(vi) As held by a Division Bench of this Court in Special Civil Application No. 6912 of 1996 decided on 8.11.1996, the BIFR and the appellate authority are expert bodies and this Court would not sit in appeal over the opinion formed by such expert bodies.

##. Mr Vasavada, learned counsel appearing for the workers' union also supported the arguments of Mr Desai and requested that the Company may be ordered to be wound up as the management was no longer interested in reviving the Company and that inspite of the scheme sanctioned by the BIFR on 14.10.1993, the persons in the management of the Company had deserted from the scene and had even left the Company to the time keepers as was pointed out by the representative of the workers' union before the BIFR on 22.2.1995.

##. Mr S.K. Jhaveri, learned counsel for the Khambhat Municipality, the learned counsel for the Employees State Insurance Corporation, the learned counsel for the Regional Provident Fund Commissioner also supported the arguments of Mr Desai.

DISCUSSION

##. Having perused the record of the BIFR and the AAIFR and having carefully considered the contentions raised by the learned counsel for the Company and the submissions made on behalf of the other parties, this Court is of the view that the opinion dated 28.4.1995 of the BIFR as confirmed by the appellate authority in its order dated 16.9.1996 deserves to be accepted and the Company deserves to be wound up for the reasons stated hereafter.

##. Before proceeding to state the reasons, the preliminary contention of Mr Soparkar that the bank has no locus standi to make any submission in the proceedings may be considered at the outset.

Apart from the fact that one of the submissions raised by Mr Soparkar pertains to quantification of the dues of the Company, the very basis of the opinion of the BIFR and AAIFR for recommending the winding up of the Company is the inability of the Company to pay the dues of the bank and the workers within a reasonable time. It must, therefore, be held that the bank and the workers have right to make submissions when this Court is considering the question whether the opinion of the BIFR and AAIFR for winding up of the Company should be accepted or not. As held by the Apex Court in the case

of Madhusudan, 42 Company Cases 125 in a winding up petition the creditors of the Company have a right to make submission for opposing or supporting the request of a creditor for making of the winding up order. The same principle would apply when the Court is considering the opinion of the BIFR under Section 20(1) of the SICA Act. Hence, the contention raised on behalf of the company about the locus standi of the Bank deserves to be rejected.

##. The Company was declared as a sick industrial Company as far back as in 1988. As stated earlier, the BIFR had found that the management of the Company (i.e. the promoters) were substantially responsible for the sickness of the Company as they had not gone for modernization and the Mill was being run on obsolete machinery and the promoters had provided inadequate/ineffective management, besides all other outside factors like recessionary condition in the textile industry.

##. After taking considerable pains, the Operating Agency had prepared a draft scheme after considering the responses of amongst others, the promoters in charge of management of the Company and the BIFR had sanctioned the scheme on 14.10.1983 with the consent of the promoters. As per the said scheme, the Company was required to agree to a consent decree to pay the suit amount of Rs.2.03 Crores with interest at the rate of 10% per annum on simple basis from the date of filing suit till the date of consent decree for which obviously the Company was required to give consent. The amount so computed (approx. Rs.304 lacs -pg. 258 of the paper book) was to carry interest at the rate of 12% p.a. with quarterly rests (linked to bank rate and will fluctuate accordingly). However, the Company did not give the consent for such a decree nor did the Company make payment of the bank dues under which the payments were required to be made as under :-

- (i) Rs. 25 lacs Down payment within one week
from the date of
sanction of the
scheme. (the
scheme was
sanctioned on
14.10.1993) (by
induction of
fresh capital by
promoters).

(ii) Rs. 15 lacs Interest By sale of stocks.

(iii) Rs. 25 lacs By December, 1993.

(iv) The balance amount to be paid in monthly instalments of Rs.3.25 lacs each beginning from April 1994 and ending March, 2000.

##. From the point of view of the Company and its promoters, the scheme sanctioned by the BIFR thus contained liberal terms both as regards the quantification of the decretal dues and also regarding the payment of instalments. Even then the Company neither did it agreed to the consent decree being passed nor carry out the other obligations imposed upon it under the Scheme. Hence, even if it were to be held that there is some substance in the contention raised by Mr Soparkar on behalf of the Company in the affidavit in reply or at the hearing of this petition about the quantification of the dues of the bank at Rs.8.47 Crores, it would not make any difference in so far as the answer to the relevant question is concerned viz. whether the Company is in a position to suggest a credible viable scheme which can reasonably be expected to be accepted by the bank as the secured creditor and the workers who had even agreed to accept the dues of about 500 workers to the extent of only Rs.75 lacs.

##. The scheme proposed by the Company before the BIFR as an alternative proposal on 16.4.1995 was to the following effect :-

Source of funds	Amount in Rs. lacs
Sale of surplus land	100
Sale of machinery except O.E. Plant and related machineries	175
Sale of current assets	15
Balance of promoters contribution	35

Total :	315

Disposition of Funds

Retirement of banks dues in One Time Settlement	145
Payment of dues to workers (wages, bonus and gratuity)	75
Provident Fund	42
Gujarat Electricity Board	20
ESI	18
Restarting expenses	15

Total :	315

The above proposed scheme indicated that the Company wanted to pay the bank only Rs.145 lacs as one time settlement which could not reasonably be expected to be agreed to by the bank when its dues on the date of filing the suit in 1987 were Rs.203 lacs and when the proposed amount of Rs.145 lacs suggested by the Company was also much below the amount quantified by the BIFR at about Rs.304 lacs on the date of the consent decree which was to be obtained by the parties and the Company even backed out from the said obligation.

##. In light of the aforesaid discussion, it must be held that the dispute raised by the Company about quantification of the dues of the bank, even if genuine, will not make any difference while answering the question whether the Company should be ordered to be wound up or not. As held by the Apex Court in the case of Madhusudan Gordhandas & Co. Vs. Madhu Woolen Industries Pvt.Ltd. (1972) 42 Company Cases 125, where there is no doubt that the Company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the Court will make a winding up order without requiring the creditor to quantify the debt precisely.

This Court is conscious of the fact that the present petition is not being heard as a winding up petition at the instance of a creditor, but the Court is considering the opinion of the BIFR under Section 20(1) of the SICA Act that the Company is not likely to become viable in future and it is just and equitable that the

Company should be wound up, but the aforesaid principle laid down by the Apex Court cannot be said to be irrelevant when Section 20(1) of the SICA Act itself requires the Court to consider the question whether to accept the opinion of the BIFR that the Company is not likely to make its networth exceed the accumulated losses within a reasonable time while meeting all its financial obligations. Section 20 of the SICA Act, in so far as the same is relevant reads as under :-

"20. Winding up of sick industrial company.- (1)

Where the Board, after making inquiry under Section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its networth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forwards its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956)."

(emphasis supplied)

Hence, if the Company could not meet its financial obligations even as quantified by the BIFR on very liberal terms (at Rs.3.04 Crores) in the sanctioned scheme dated 14.10.1993, the dispute raised by the petitioner to the effect that the dues of the bank from the Company would not be Rs.8.47 Crores does not advance the petitioner's case.

Even if the interest on Rs. 203 lacs is calculated on simple basis from 1987, the bank's dues in the year 1998 on the basis of the bank rate of interest (without penal interest) is not likely to be less than Rs.6 Crores and admittedly the Company is not in a position to pay even Rs.3 Crores to the bank within a reasonable period, as the promoters do not intend to

induct any fresh capital or to infuse any funds from any other source.

##. The reason advanced by the Company for failure of the sanctioned scheme dated 14.10.1993 that it was the immediate strike of the workers after sanction of the scheme is not at all convincing. Even the case of the Company before the BIFR at the hearing on 22.2.1995 was that the workers/staff of the Company were on strike since June, 1994 and the Company's operations could not be carried on. As will be clear from the relevant provisions of the scheme quoted herein above, the promoters of the Company were to induct funds to the tune of Rs. 50 lacs by way of equity capital in 1993-94. The Company was also to pay Rs.65 lacs to the bank by December, 1993. Neither of the obligations were carried out by the Company by March 1994.

In response to a query from the Court as to why the workers would go on strike from June, 1994 when they were to get employment pursuant to the scheme sanctioned by the BIFR in October, 1993, the learned counsel for the Company submitted that the workers were bent upon closure of the Company since they would get a higher amount of compensation under the scheme framed by the Central Government than under the scheme sanctioned by the BIFR. It was pointed out by Mr Vasavada appearing on behalf of the workers that the maximum amount payable under the scheme of the Central Government was between Rs. 20,000/- and Rs.25,000/- per worker and that no worker would put his job at stake for a sum of Rs.25,000/-. The case of the workers was that it was the promoters, who fled the scene appears to be more credible than the excuse held out by the Company for blaming the workers. In any view of the matter, the Court is not required to decide this question for the simple reason that the failure on the part of the Company in not carrying out the obligations imposed upon them under the scheme sanctioned by the BIFR on 14.10.1993 had taken place much prior to the commencement of the alleged strike by the workers in June, 1994. This aspect has been examined only to consider whether the management had made bona fide attempts to revive the Company after sanction of the scheme by the BIFR and the painful answer is in the negative.

##. As regards the grievance made on behalf of the Company about inadequate opportunity given to the Company by the appellate authority, it is not possible to accept the said contention. The Company was well aware of the fact that as per the sanctioned scheme it was required to

submit periodical reports for reporting compliance with the scheme. It had failed to do so for a period of more than a year after sanction of the scheme in October, 1993. Even on 22.2.1995, the BIFR had formed its prima facie opinion that the Company deserved to be wound up. The alternative scheme proposed by the Company for meeting with a part of the liability by sale of the assets had also not appealed to the BIFR at the hearing on 28.4.1998. The matter was thereafter before the appellate authority and the hearing was fixed on 12.9.1996. Hence, the Company very much knew that the 1993 Scheme was a non-starter and the Company had more than two years time to formulate a detailed viable scheme in case it was inclined to do so. The contention urged by Mr Soparkar alleging lack of adequate opportunity must also, therefore, fail.

##. Coming to the contention about the merits of the scheme proposed by the Company before the BIFR and reiterated before the appellate authority, a perusal of the opinion of the BIFR as well as the order of the AAIFR clearly shows that the respective expert bodies had considered the scheme suggested by the Company on merits and found that the same was not viable. A Division Bench of this Court in Special Civil Application No. 6912 of 1996 decided on 8.11.1996 has held that when the factory of a Company is closed and when proceedings under BIFR Act are initiated and "the Board has taken the view that there is no alternative but to wind up the units, the decision of the Board is that of an Expert Body. Ordinarily, a decision of such a Body is not interfered with unless it is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision. On the facts and circumstances of this case, we are satisfied that the Expert Body could not have reached any decision other than the one reached by them. Seen in this light, the action taken does not seem to be unlawful or otherwise arbitrary and/or unreasonable."

##. Applying the aforesaid test, it is not possible to hold that the opinion of the BIFR is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision. Both the aforesaid expert bodies took into account the fact which is not disputed by the learned counsel for the Company even at the hearing of this petition that the promoters of the Company do not intend to invest any fresh capital or bring funds for revival of the Company, sale of surplus land to the extent of 17 Acres is not likely to fetch more than Rs.1.5 Crores, the partial sale of the machinery is expected to generate funds to the tune of Rs.70 lacs

which amount would be a doubtful proposition with passage of time as to whether the machineries which are lying idle since 1988 would fetch such an amount. Even then the aforesaid expert bodies have accepted the assumption made by the Company and found that the amount of Rs.220 lacs which may be generated by the sale of the assets as aforesaid would not be sufficient to revive the Company as the aggregate of dues of the bank and the dues of the workers would exceed the aforesaid amount by 3 to 4 times. For revival the Company would also need huge funds for capital expenditure as well for working capital. Even the case of the Company's Consultant Mr Dhir, before the BIFR was that the replacement of the old 22000 spindles would require investment of Rs.40 Crores at the rate of Rs.20,000/- per spindle. On the aforesaid basis, even assuming that the Company wants to trim down its operations to the tune of 25% of its present capacity, it would still need atleast Rs.10 Crores for restarting the factory even without paying any dues to the bank or to the workers. Even though a few inquiries were made during pendency of the proceedings before the BIFR and the AAIFR, no concrete proposal had come from any sponsor as is clear from para 5 of the opinion of the BIFR (28.4.1995) and para 5 of the order of the AAIFR (16.9.1996) nor is any such proposal brought before this Court during pendency of this petition for about a year. This Court is, therefore, more than satisfied that even on an independent assessment of the material on record, the inescapable conclusion is that it is just and equitable that the Company should be wound up as the Company is unable to make its networth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and as a result thereof the Company is not likely to become viable in future.

##. In view of the above discussion, the following order is passed :-

O R D E R

The opinion of the BIFR under Section 20 of the SICA Act as confirmed by the AAIFR under Section 25 of the SICA Act is accepted and M/s Raj Prakash Spg. Mills Ltd. is ordered to be wound up.

The Official Liquidator attached to this Court is appointed as the Liquidator. The Official Liquidator shall take possession of all the assets of the Company after making an inventory.

The public notice of winding up of the Company

shall be published in the daily newspapers "Indian Express" Ahmedabad and Baroda editions and in the "Jansatta" Ahmedabad and Baroda editions. The costs shall be borne by Bank of Baroda.

##. At this stage, Mr Soparkar, learned counsel for the Company prays that the operation of this order may be stayed in order to enable the Company to move the appellate Court and also to explore the possibility of finding out a co-promoter or a sponsor for reviving the Company.

In the facts and circumstances of the case, the request is granted. The operation of this order is stayed for a period of one month from today.

Sd/-

September 11, 1998 (M.S. Shah, J.)